

Appl. No. 10/065,869
Docket No. 128653/GEM-0068

REMARKS / ARGUMENTS

Status of Claims

Claims 1-29 are pending in the application. Claims 1-2, 5-6, 11-12, 15-16, 21-22 and 25-26 stand rejected. Claims 3-4, 7-10, 13-14, 17-20, 23-24 and 27-29 are objected to. Applicant has canceled Claims 2, 6, 12, 16, 22 and 26, leaving Claims 1, 3-5, 7-11, 13-15, 17-21, 23-25 and 27-29 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under paragraph, 35 U.S.C. §112, second paragraph, 35 U.S.C. §102(e), have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Rejections Under 35 U.S.C. §112, Second Paragraph

Claims 2, 6, 12, 16, 22 and 26 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

While Applicant respectfully disagrees with the Examiner for reasons already of record, Applicant has nonetheless in an effort to advance this case to issue canceled Claims 2, 6, 12, 16, 22 and 26 without prejudice, thereby resulting in the instant rejection being moot.

In view of the foregoing, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection, which Applicant considers to be moot.

Rejections Under 35 U.S.C. §102(e)

Claims 1, 5, 11, 15, 21 and 25 stand rejected under 35 U.S.C. §102(e) as being anticipated by Wahl et al. (U.S. Patent No. 6,359,960, hereinafter Wahl).

Applicant traverses this rejection for the following reasons.

Applicant respectfully submits that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, *in a single prior art reference.*" *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d

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628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the *** claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements "arranged as in the claim." *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

At the outset, the Examiner states that "the claimed 'sagittal plane' and 'axial plane' are not specifically defined in the claim and the examiner is entitled to the broadest reasonable interpretation", and that "any orthogonal planes meet the claimed 'sagittal plane' and 'axial plane'" definitions. Paper No. 1007, page 3.

Applicant respectfully disagrees that the term sagittal plane is not specifically defined in the claim, as one skilled in the art would appreciate from the very definition of sagittal plane itself, that sagittal plane means a plane running parallel to the medial or midsagittal plane (the midsagittal plane being a sagittal plane running through the middle of the object being imaged).

In comparing Wahl with the claimed invention, Applicant submits that Wahl discloses a first plane (defined by the position of the x-ray detector relative to the patient's head, as illustrated in Figure 1), and a plurality of secondary planes (defined by the projection images illustrated in Figure 2), but is absent any disclosure of the first plane being *a sagittal plane* (running parallel to the medial or midsagittal plane) since the disclosure of Wahl is deficient in establishing the orientation of the patient's head relative to any midsagittal plane that may be applicable. Furthermore, absent any definition in Wahl as to what the applicable midsagittal plane may be to anticipate the claimed sagittal plane, Applicant finds Wahl to also be deficient in disclosing the claimed plurality of secondary images taken in axial planes being *orthogonal to the first sagittal plane*.

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In addition to the foregoing, Applicant respectfully disagrees with the Examiner for the following reasons.

Claim 1 recites, inter alia,

“...associating *a label to a point* in the primary image;

calculating a distance from *the point to a line of intersection between the primary image and each secondary image* in the plurality of images; and

associating *the label* to a secondary image in the plurality of secondary images *having a line of intersection with the primary image closest to the point.*”

In alleging anticipation, the Examiner looks to Wahl at:

markers 6', 9', 6, 9, 6.1-6.4, 7.1-7.4, 8.1-8.4, and 9.1-9.4, col. 4, lines 23-43, and Figures 1-2, for support in disclosing “associating *a label to a point* in the primary image”;

Figures 2 and 5, and the Abstract, for support in disclosing “calculating a distance from *the point to a line of intersection between the primary image and each secondary image* in the plurality of images”; and

Figures 2 and 5, col. 6, lines 55-67, and col. 7, lines 47-67, for support in disclosing “associating *the label* to a secondary image in the plurality of secondary images *having a line of intersection with the primary image closest to the point.*” (Paper No. 1007, Page 5).

Applicant respectfully disagrees that Wahl discloses all that the Examiner alleges, and submits that Wahl fails to disclose each and every element of the claimed invention *arranged as claimed.*

In view of the Examiner's interpretation of Wahl, “*the (claimed) label*” appears to be the actual numeric marker 6', 9', 6, 9, 6.1-6.4, 7.1-7.4, 8.1-8.4, and 9.1-9.4, and “*the (claimed) point*” appears to be the illustrated dot or circle associated with the respective marker in Figures 1 and 2. In further view of the Examiner's interpretation of Wahl, and with reference to the Abstract and to Figures 2 and 5, the *calculated distance* in the limitation “calculating a distance from *the point to a line of intersection between the*

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primary image and each secondary image in the plurality of images”, appears to be the distance G8.1-G8.4, G9.1-G9.4, G20.1-G20.4 and G21.1-G21.4.

However, Applicant finds the distance G8.1-G8.4, G9.1-G9.4, G20.1-G20.4 and G21.1-G21.4 to be directed *from points* 8, 9, 20 and 21, *to points* 6.1-6.4, 7.1-7.4, 8.1-8.4, 9.1-9.4, 20.1-20.4 and 21.1-21.4, and not to be directed from *“the point to a line of intersection between the primary image and each secondary image* in the plurality of images” as claimed.

Furthermore, Applicant submits that the Examiner has not stated with specificity where Wahl does disclose *“a line of intersection between the primary image and each secondary image* in the plurality of images”.

In the claimed invention, the primary image is defined as being taken in a first plane, and the plurality of secondary images is defined as being taken in planes orthogonal to the first plane. As such, the line of intersection between the planes must be a line. In claiming anticipation of the claimed invention, the Examiner has not stated where this line of intersection is disclosed in Wahl.

Continuing on with the limitations of Claim 1, the Examiner looks to Figures 2 and 5, col. 6, lines 55-67, and col. 7, lines 47-67, of Wahl for support in disclosing *“associating the label to a secondary image in the plurality of secondary images having a line of intersection with the primary image closest to the point.”* Here, Applicant finds *the label* (numeric markers 6', 9', 6, 9, 6.1-6.4, 7.1-7.4, 8.1-8.4, and 9.1-9.4) to be associated with their original features (the illustrated dot or circle associated with the respective marker in Figures 1 and 2), and not to be associated with a secondary image in the plurality of secondary images *having a line of intersection with the primary image closest to the point*, as claimed.

Furthermore, in alleging anticipation, the Examiner has failed to establish where Wahl discloses *“associating the label to a secondary image* in the plurality of secondary images *having a line of intersection with the primary image closest to the point”*.

In view of this last limitation of Claim 1, Applicant first submits that Wahl fails to disclose the claimed *“line of intersection”*, and then submits that Wahl fails to disclose

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the claimed *"to a secondary image... having a line of intersection with the primary image closest to the point"*.

To establish anticipation, the Examiner must show where the single prior art reference discloses each and every element arranged as claimed, while applying consistency in defining the elements and their arrangement.

Absent anticipatory disclosure of each and every element of the claimed invention *arranged as claimed*, Wahl cannot be anticipatory.

In view of Claims 5, 11, 15, 21 and 25 having similar language to that of Claim 1, Applicant submits that the foregoing remarks apply equally to these other independent claims.

Dependent claims inherit all of the limitations of the respective parent claim.

In view of the foregoing remarks, Applicant submits that Wahl does not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejection under 35 U.S.C. §102(e) has been traversed, and requests that the Examiner reconsider and withdraw of this rejection.

Applicant has amended the claims for presentation in a better form for appeal by canceling previously rejected claims.

In light of the foregoing remarks and amendments, Applicant respectfully submits that the proposed amendments and arguments comply with 37 C.F.R. §1.116 and should therefore be entered, and with their entry that the Examiner's rejections under 35 U.S.C. §112, second paragraph, 35 U.S.C. §102(e), have been traversed, and that the application is now in condition for allowance. Such action is therefore respectfully requested.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

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The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 07-0845.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,
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